

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**  
Norfolk Division

IN RE:  
SERGIO PLAZA BUSANTE, JR.  
*aka* SERGIO P. BUSANTE  
LYDIA TRAQUENA BUSANTE  
Debtors

Case No. 19-70044-FJS

Chapter 7

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BANK OF AMERICA, N.A.  
Movant

v.  
SERGIO PLAZA BUSANTE, JR.  
*aka* SERGIO P. BUSANTE  
LYDIA TRAQUENA BUSANTE  
Debtors/Respondents

and  
TOM C. SMITH, JR.  
Trustee/Respondent

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**MOTION FOR RELIEF FROM AUTOMATIC STAY**

Bank of America, N.A. ("Movant") hereby moves this Court, pursuant to 11 U.S.C. § 362, for relief from the automatic stay, with respect to certain real property of the Debtors having an address of 525 Declaration Rd, Virginia Beach, VA 23462-2250 (the "Property"), for all purposes allowed by the Note (defined below), the Deed of Trust (defined below), and applicable law, including but not limited to the right to foreclose. In further support of this Motion, Movant respectfully states:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 & 157.
2. A petition under Chapter 7 of the United States Bankruptcy Code was filed with respect to the Debtors on January 7, 2019.
3. The Debtors have executed and delivered or are otherwise obligated with respect to that certain promissory note in the original principal amount of \$157,250.00 (the "Note"). A copy of the Note is attached hereto as Exhibit A. Movant is an entity entitled to enforce the Note.

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Lauren French, VSB# 85478  
8100 Three Chopt Rd.  
Suite 240  
Richmond, VA 23229  
(804) 282-0463(Phone)  
*Attorney for the Movant*

4. As evidenced by the assignments, endorsements, and/or allonges attached to the Note, the Note was transferred to Movant as follows: the original holder of the Note, Bank of America, N.A., by and through its Assistant Vice President Nereida G. Diaz, executed a blank endorsement of the Note, which endorsement is located on Page 3 of Note, making the Note payable to the bearer of the Note. See Exhibit A hereto.

5. Pursuant to that certain Deed of Trust (the “Deed of Trust”), all obligations (collectively, the “Obligations”) of the Debtors under and with respect to the Note and the Deed of Trust are secured by the Property. The lien created by the Deed of Trust was perfected by recording of the Deed of Trust in the office of the Clerk of the Circuit Court of Virginia Beach City, Virginia. A copy of the recorded Deed of Trust is attached hereto as Exhibit B.

6. The Note is a negotiable instrument under Va. Code § 8.3A-104. When Bank of America, N.A. endorsed the Note in blank, it became payable to bearer and enforceable by the holder of the Note. The entity in possession of the Note as of the date of this motion is Bank of America, N.A. as agent and/or custodian for and on behalf of Movant. “Deeds of trust and mortgages are regarded in equity as mere securities for the debt, and whenever the debt is assigned the deed of trust or mortgage is assigned or transferred with it.” *Horvath v. Bank of New York, N.A.*, 641 F.3d 617, 623 (4th Cir. 2011) (quoting *Williams v. Gifford*, 139 Va. 779 (1924)).

7. As of February 25, 2019, the outstanding amount of the Obligations due to the Movant, less any partial payments or suspense balance is:

Unpaid Principal Balance	\$152,863.57
Unpaid, Accrued Interest	\$1,554.38
Uncollected Late Charges	\$0.00
Mortgage Insurance Premiums	\$52.42
Taxes and Insurance Payments on behalf of Debtors	\$0.00
Other Costs	\$0.00
Less: Partial Payments	\$0.00
Minimum Outstanding Obligations	\$154,470.37

8. The foregoing Other Costs consist of the following:

Pre-petition or Postpetition	Fee Description	Amount
N/A	N/A	\$0.00

9. The following chart sets forth the number and amount of contractual payments due pursuant to the terms of the Note that have been missed by the Debtor as of February 25, 2019:

Number of Missed Payments	From	To	Monthly Payment Amount	Total Missed Payments
2	01/01/2019	02/01/2019	\$919.00	\$1,838.00
Less contractual partial payments (suspense balance):				\$0.00

**Total Contractual Payments: \$1,838.00**

10. In addition to the other amounts due to Movant reflected in this Motion, as of the date hereof, in connection with seeking the relief requested in this Motion, Movant has also incurred \$750.00 in legal fees and \$181.00 in costs.

11. The estimated value of the Property is \$144,522.50. The basis for such valuation is Debtor's Schedules.

12. Cause exists for relief from the automatic stay for the following reasons:

a. Movant's interest in the Property is not adequately protected. Movant's interest in the collateral is not protected by an adequate equity cushion.

b. Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtors have no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary for an effective reorganization.

13. Pursuant to the Debtors' Statement of Intention, the Debtors have surrendered their interest in the Property.

WHEREFORE, Movant prays that this Court issue an Order terminating or modifying the stay and granting the following:

1. Relief from the stay for all purposes allowed by the Note, the Deed of Trust, and applicable law, including but not limited to allowing Movant to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.

2. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

3. For such other relief as the Court deems proper.

Respectfully Submitted,

Dated: March 22, 2019

/s/ Lauren French

Lauren French VSB# 85478

Attorney

BWW Law Group, LLC

8100 Three Chopt Rd.

Suite 240

Richmond, VA 23229

(804) 282-0463 (phone)

(804) 282-0541 (facsimile)

bankruptcy@bww-law.com

Attorney for the Movant

**CERTIFICATE OF SERVICE**

I certify that on this 22nd day of March, 2019, the following person(s) were or will be served with a copy of the foregoing Motion for Relief from Automatic Stay electronically via the CM/ECF system or by first class mail, postage prepaid:

Tom C. Smith, Jr., Trustee  
P.O Box 1506  
Virginia Beach, VA 23451

Sergio Plaza Busante, Jr.  
*aka* Sergio P. Busante  
525 Declaration Rd  
Virginia Beach, VA 23462-2250

Carolyn L. Camardo  
5101 Cleveland Street, Suite 200  
Virginia Beach, VA 23462

Lydia Traquena Busante  
525 Declaration Road  
Virginia Beach, VA 23462

Sergio Plaza Busante, Jr.  
*aka* Sergio P. Busante  
525 Declaration Road  
Virginia Beach, VA 23462

Lydia Traquena Busante  
525 Declaration Rd  
Virginia Beach, VA 23462-2250

/s/ Lauren French

Lauren French VSB# 85478

Attorney

BWW Law Group, LLC

8100 Three Chopt Rd., Suite 240

Richmond, VA 23229

(804) 282-0463 (phone)

(804) 282-0541 (facsimile)

bankruptcy@bww-law.com

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